

63624-3

63624-3

NO. 63624-3

---

**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

---

In re the Dependency of D.F.-M.

RICO VERNER,

Respondent,

v.

ALYCE FABIAN-MILLER,

Appellant.

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2010 APR -1 PM 2:43

---

**BRIEF OF RESPONDENT DSHS**

---

ROBERT M. MCKENNA  
Attorney General

SCOTT MAJORS  
Assistant Attorney General  
WSBA #20203  
3501 Colby Avenue, Suite 200  
Everett, WA 98201  
(425) 257-2170

ORIGINAL

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. STATEMENT OF THE ISSUE .....1

III. STATEMENT OF THE CASE .....1

IV. ARGUMENT .....6

    A. Standard of Review.....6

    B. The Interstate Compact On The Placement Of Children Is  
    Law In Washington; It Is Intended To Ensure That  
    Children Placed In Other States Are Safe And Receive  
    The Services Required Under Washington Law.....7

    C. The Court-Ordered Placement Of A Dependent Child In  
    Another State Requires The Consent Of That State  
    Through The ICPC.....11

    D. The Court Should Adopt The Majority Interpretation  
    That The ICPC Applies To Placements By Courts With A  
    Biological Parent In Another State .....15

V. CONCLUSION .....19

## TABLE OF AUTHORITIES

### Washington Cases

|  |         |
|--|---------|
| <i>Colbert v. Pac. States Marine Fisheries Comm'n</i> , 124 Wn. App. 821,<br>104 P.3d 17 (2004).....                               | 6, 7, 8 |
| <i>Friends of Columbia Gorge, Inc. v. Wash. State Forest Practices<br/>Appeals Bd.</i> , 129 Wn. App. 35, 118 P.3d 354 (2005)..... | 7       |
| <i>In re Welfare of Colyer</i> , 99 Wn. 2d 114, 660 P.2d 738 (1983).....   | 8       |
| <i>State v. Svenson</i> , 104 Wn.2d 533, 707 P.2d 120.....   | 7       |

### Other State Cases

|  |       |
|--|-------|
| <i>Arizona Dep't of Econ. Sec. v. Leonardo</i> , 200 Ariz. 74, 22 P.3d 513<br>(Ariz. Ct. App. 2001)..... | 8, 16 |
| <i>Ark. Dept. of Human Serv. v. Huff</i> , 347 Ark. 553, 65 S.W.3d 880<br>(2002).....                    | 16    |
| <i>C.K. v. Dept. of Children and Families</i> , 949 So.2d 336 (FL. 2007).....                            | 16    |
| <i>D.S.S. v. Clay County Dept. of Human Resources</i> , 755 So.2d 584<br>(AL. 1999) .....                | 16    |
| <i>Dept. of Children and Families v. Benway</i> , 745 So.2d 437 (FL.<br>1999) .....                      | 17    |
| <i>Green v. Div. of Family Services</i> , 864 A.2d 921 (DE. 2004) .....                                  | 16    |
| <i>In re Adoption of Warren</i> , 44 Mass. App. Ct. 620, 693 N.E.2d 620<br>(1998).....                   | 16    |
| <i>In re J.H.</i> 156 Vt. 66, 587 A.2d 1009 (1991).....  | 16    |
| <i>In re Petition of T.M.J., J.A.</i> , 878 A.2d 1200 (D.C. 2005) .....                                  | 16    |
| <i>K.D. G.L. B.P. v. Hinds County Dept. of Human Services</i> , 771 So.2d<br>907 (MS. 2000) .....        | 16    |

|  |    |
|--|----|
| <i>State ex rel. Juvenile Dept. of Clackamas County v. Smith</i> , 107 Or. App. 129, 811 P.2d 145 (1991).....                  | 16 |
| <i>Tara S. v. The Superior Court of San Diego County</i> , 13 Cal. App. 4 <sup>th</sup> 1834, 17 Cal. Rptr. 2d 315 (1993)..... | 16 |

**Federal Cases**

|   |             |
|---|-------------|
| <i>Cuyler v. Adams</i> , 449 U.S. 433, 101 S.Ct. 703 (1981).....  | 8           |
| <i>John Doe v. Penn. Bd. of Probation and Parole</i> , 513 F.3d 96, 105 (3 <sup>rd</sup> Cir. 2008) ..... | 8           |
| <i>McComb v. Wambaugh</i> , 934 F.2d 474 (3 <sup>rd</sup> Cir. 1991).....                                 | 7, 8, 9, 16 |
| <i>Texas v. New Mexico</i> , 482 U.S. 124, 107 S.Ct. 2279 (1987).....                                     | 7, 8        |
| <i>West Virginia ex. Rel. Dyer v. Sims</i> , 341 U.S. 22, 71 S.Ct. 557 (1951).....                        | 8, 9        |

**Constitutional Provisions**

|   |   |
|---|---|
| U.S. Constitution, Article I, section 10..... | 7 |
|---|---|

**Washington Statutes**

|                                    |       |
|------------------------------------|-------|
| Chapter 26.34 RCW.....             | 1, 13 |
| Laws of 1971, ch. 168, sec. 1..... | 10    |
| RCW 13.04.030(1)(a) .....          | 11    |
| RCW 13.04.030(1)(d).....           | 14    |
| RCW 13.34.020 .....                | 18    |
| RCW 13.34.030(6).....              | 2, 3  |
| RCW 13.34.138 .....                | 17    |
| RCW 13.34.145 .....                | 17    |

|                                |            |
|--------------------------------|------------|
| RCW 26.34.010 .....            | 10         |
| RCW 26.34.010, Art. I.....     | 10, 16     |
| RCW 26.34.010, Art. II .....   | 11, 12     |
| RCW 26.34.010, Art. III .....  | 11, 12, 15 |
| RCW 26.34.010, Art. VII.....   | 12         |
| RCW 26.34.010, Art. VIII ..... | 12         |
| RCW 26.34.010, Art. X .....    | 16         |

**Other State Statutes**

|                              |    |
|------------------------------|----|
| 10 O.S.A. sec. 571-576 ..... | 13 |
|------------------------------|----|

**Regulations**

|  |        |
|--|--------|
| ICPC Reg. 3(1) and 3(5) (App. A at 3)..... | 12, 15 |
| ICPC Reg. 3(6)(a) .....                    | 13, 14 |
| ICPC Reg. 3(6)(b).....                     | 13, 14 |
| WAC 388-25-0440 .....                      | 11     |

**Other Authorities**

|   |       |
|---|-------|
| Bernadette W. Hartfield, <i>The Role of the Interstate Compact on the Placement of Children in Interstate Adoption</i> , 68 Neb. L. Rev. 292 (1989).....                                      | 9, 10 |
| Kimberly M. Butler, <i>Child Welfare- Outside the Interstate Compact on the Placement of Children- Placement of a Child with A Natural Parent</i> , 37 Vill. L. Rev. 896 (1991) .....         | 9     |
| The Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children, <i>Guide to the Interstate Compact on the Placement of Children</i> (1985) ..... | 9     |

## **I. INTRODUCTION**

Washington is a party to the Interstate Compact on the Placement of Children (ICPC). The ICPC is codified in Washington at chapter 26.34 RCW and has the force and effect of state law. The ICPC governs the interstate placement of children by state agencies and state courts. Before a child who is subject to a dependency proceeding may be placed with a parent in another state, the ICPC requires that Washington obtain the approval of that state before the placement is made. The placement of a child in another state without approval pursuant to the ICPC is a violation of Washington law.

## **II. STATEMENT OF THE ISSUE**

Did the superior court act in violation of the Interstate Compact on the Placement of Children, chapter 26.34 RCW, when it ordered DSHS to place a dependent child with his non-custodial parent in Oklahoma after Oklahoma determined the placement was contrary to the interests of the child and refused to approve the placement?

## **III. STATEMENT OF THE CASE**

D.F.-M., a four-year-old boy, was born on July 19, 2005. CP at 185. D.F.-M.'s mother has a long history with DSHS. The Department's Child Protective Services began receiving referrals regarding the mother as early as 2002; these referrals continued until D.F.-M. was taken into

protective custody in 2008. CP at 189-90. Some of these referrals were in regard to D.F.-M.'s half-siblings, A.F.-M. and J.M. *Id.* Starting in late 2006 and throughout 2007, DSHS received a series of referrals alleging neglect, domestic violence, and drug use. CP at 187-88. In late 2007, the mother signed a voluntary service plan and a safety plan in response to those allegations. CP at 187. Despite attempts to maintain D.F.-M. and his siblings in the mother's home, the mother was not able to overcome her problems and the children were placed into protective custody in April 2008. On April 18, 2008, DSHS filed a petition with the Snohomish County juvenile court alleging that the children were dependent pursuant to RCW 13.34.030(6). CP at 185-92.

At the time the dependency petition was filed, DSHS did not know the whereabouts of D.F.-M.'s father, Rico V. CP at 181, 182. It was believed his last known address was in Tulsa, Oklahoma. CP at 186. DSHS had no information as to the father or as to what role—if any—he played in D.F.M.'s life. CP at 182. The mother has alleged that the father had not seen D.F.-M. since the child was seven months old. CP at 90.

On April 16, 2008, the juvenile court entered an agreed order that found D.F.-M. to be a dependent child as to his mother pursuant to RCW

13.34.030(6)(c).<sup>1</sup> CP at 158-66. The juvenile court also entered a disposition order that placed the child in the custody of DSHS for placement in relative or licensed foster care. CP at 160. Because the father's whereabouts remained unknown and because he had yet to be served with the dependency petition, he did not appear or otherwise participate in the hearing where the mother's dependency order was entered. CP at 158, 164.

Shortly thereafter, the father learned that the child was in foster care and contacted DSHS. CP at 40-41. He indicated that he was interested in having his child placed with him. *Id.* On July 5, 2008, the father was served with the dependency petition. CP at 157. On September 23, 2008, he filed a response to the petition indicating he had no personal knowledge of the allegations, and denying that his child was a dependent child. CP at 154-56. To date, no order has entered that finds D.F.-M. is a dependent child as to the father, Rico V.

Once the father was located, DSHS submitted a request under the Interstate Compact on the Placement of Children (ICPC) for a home study on the father and for Oklahoma's agreement to supervise any placement of the child with him, as well as the delivery of court-ordered services. CP at

---

<sup>1</sup> This statute defines a "dependent child" as any child who "[h]as no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development."

151. Oklahoma completed its home study and denied Washington's request for permission to place D.F.-M. with the father. *Id.* In support of the denial, the Oklahoma social worker noted that the father had never parented his child, had not completed a parenting class, did not have a steady income, would not be able to care for the child should he become gainfully employed, drove a car despite not having a driver's license or insurance, lacked a car seat for the child, and was not honest with the Oklahoma social worker about a relationship he was involved in. *Id.* Oklahoma recommended the father be reevaluated for placement at a later date. *Id.* In light of the denial, DSHS could not support placement of the child with the father. *Id.*

Despite the denial by Oklahoma of Washington's ICPC request, on October 20, 2008, the father asked the juvenile court to order DSHS to place the child with him in Oklahoma. CP at 123-26. He claimed he addressed some of the issues cited by Oklahoma as a basis for its denial of Washington's ICPC request. *Id.* The juvenile court denied the father's motion without prejudice and invited him to re-note the motion once he addressed all of the concerns cited by Oklahoma and completed a parenting class. CP at 120-21.

By April 2009, the father had addressed many of the concerns raised by Oklahoma during the summer of 2008. CP at 116-17. He

completed an on-line parenting course, moved in with his mother, completed school, obtained employment, and was in the process of obtaining a driver's license. *Id.* The father was having weekly phone contact with D.F.-M. CP at 112. DSHS made a second request to Oklahoma for consent to place D.F.-M. with the father. CP at 117. Oklahoma denied the second ICPC request. CP at 45; 1RP at 4, 5-6.<sup>2</sup>

On May 28, 2009, the father renewed his motion to have the child placed with him in Oklahoma. CP at 84-87. The mother opposed the father's request claiming he had unresolved anger issues and had no contact with D.F.-M. since the child was seven months old. CP at 90. She also claimed the father threatened to beat one of her other children when she was pregnant with D.F.-M. *Id.* See also 2RP at 6-7.

On June 1, 2009, the court held a hearing on the father's motion for placement. 1RP at 1-12. The father argued he had resolved the issues of concern noted in the 2008 ICPC home study. 1RP at 3-5. See also 2RP at 10. He also argued that the reasons cited by Oklahoma in support of denial of the second ICPC request—namely, that there were not enough bedrooms in the father's residence—were without merit. 1RP at 4. See also 2RP at 8, 11. The father argued he had a positive relationship with

---

<sup>2</sup> DSHS follows the appellant's numbering of the reports of proceeding. 1RP refers to the transcript of the June 1, 2009, hearing. 2RP refers to the transcript of the June 5, 2009, hearing.

his child, was a fit and capable parent, and that the child should be placed with him regardless of the ICPC requirements. 1RP at 5.

DSHS took the position that without an approved ICPC home study, it could not lawfully place the child with the father in Oklahoma. 1RP at 5-6. The mother noted her concerns about the father's anger problem and argued D.F.-M. should not be separated from his siblings. 1RP at 6-7. At the conclusion of the hearing, juvenile court stated, "All right. I'm ordering the move. I just don't have any grounds to not do it." 1RP at 10. *See also* CP at 81-82.

A few days later, the mother filed a motion to stay D.F.-M.'s placement while she sought discretionary review. CP at 78-80. A hearing on the motion was heard on June 5, 2009. 2RP at 1-23. The court denied the motion to stay the placement pending appeal. 2RP at 21. *See also* CP at 76-77. The mother's motion for discretionary review was granted.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

The substantive issue the mother raises in her appeal is one of statutory and interstate compact construction—whether the Interstate Compact on the Placement of Children applied to the child's placement with the father. Interstate compacts are governed by both statutory and contractual law. *Colbert v. Pac. States Marine Fisheries Comm'n.*, 124 Wn.

App. 821, 823, 104 P.3d 17 (2004). An interstate compact must be construed and applied in accordance with its terms. *Texas v. New Mexico*, 482 U.S. 124, 128, 107 St. Ct. 2279, 96 L.Ed.2d 105 (1987).

Because the ICPC has never been adopted by Congress, its interpretation remains a question of state law. *McComb v. Wambaugh*, 934 F.2d 474, 479 (3<sup>rd</sup> Cir. 1991). Even so, a court interpreting the ICPC must interpret the statute in light of the drafter's purpose and uniformity of interpretation is an important factor. *McComb*, 934 F.2d at 479. This court reviews questions of statutory construction *de novo* as they present issues of law. *Friends of Columbia Gorge, Inc. v. Wash. State Forest Practices Appeals Bd.*, 129 Wn. App. 35, 46, 118 P.3d 354 (2005).

**B. The Interstate Compact On The Placement Of Children Is Law In Washington; It Is Intended To Ensure That Children Placed In Other States Are Safe And Receive The Services Required Under Washington Law**

A compact is a binding legal instrument which provides for formal cooperation between the member states. *State v. Svenson*, 104 Wn.2d 533, 538, 707 P.2d 120. Generally, authority for a state to enter into a compact is found in the compact clause of the U.S. Constitution, Article I, section 10. The compact clause requires Congressional approval of all agreements between or among states that "tend to concentrate political power in the states and thus encroach upon the supremacy of the United

States.” *Colbert*, 124 Wn. App. at 823. The ICPC, however, does not “encroach upon the supremacy of the United States” and does not require Congressional consent. *McComb*, 934 F.2d at 479. Because Congressional consent was neither given nor required, the Compact does not express federal law. *Cf. Cuyler v. Adams*, 449 U.S. 433, 440, 101 S.Ct. 703 (1981). As a result, the ICPC must be construed as state law. *McComb*, 934 F.2d at 479. However, since this is an issue of first impression in Washington, the court may look for guidance from other jurisdictions. *In re Welfare of Colyer*, 99 Wn. 2d 114, 119, 660 P.2d 738 (1983).

When adopted by a state, an interstate compact, such as the ICPC, is not only an agreement between that state and the other states that have adopted it, but also becomes the law of that state. *Arizona Dep’t of Econ. Sec. v. Leonardo*, 200 Ariz. 74, 77, 22 P.3d 513 (Ariz. Ct. App. 2001). In addition to having the force of law, an interstate compact imposes contractual obligations on member states as well. *Colbert v. Pac. States Marine Fisheries Comm’n*, 124 Wn. App. 821, 823, 104 P.3d 17 (2004). *See also John Doe v. Penn. Bd. of Probation and Parole*, 513 F.3d 96, 105 (3<sup>rd</sup> Cir. 2008). As an interstate compact, the ICPC is a legal document that must be “construed and applied in accordance with its terms.” *Texas v. New Mexico*, 482 U.S. at 128 (quoting *West Virginia ex. Rel. Dyer v.*

*Sims*, 341 U.S. 22, 28, 71 S.Ct. 557 (1951)). The ICPC should be interpreted in light of the drafter's purpose in crafting the compact; uniformity of interpretation is important in the application of a compact. *McComb v. Wambaugh*, 934 F.2d 474, 479 (3<sup>rd</sup> Cir. 1991).

The ICPC was drafted in the late 1950s to address concerns about the interstate adoption and foster care placement of children. Kimberly M. Butler, *Child Welfare- Outside the Interstate Compact on the Placement of Children- Placement of a Child with A Natural Parent*, 37 Vill. L. Rev. 896 (1991). These concerns included:

- (1) The failure of importation and exportation statutes to provide protection for children subject to interstate placements;
- (2) The territorial limitation of a state's jurisdiction and the powerlessness of the state from which the child was sent to ensure that proper care and supervision were provided in another state; and
- (3) The absence of a means to compel the state to which the child was sent to provide services in support of the child's placement.

Bernadette W. Hartfield, *The Role of the Interstate Compact on the Placement of Children in Interstate Adoption*, 68 Neb. L. Rev. 292, 295 (1989) (quoting, The Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children, *Guide to the Interstate Compact on the Placement of Children* 3, (1985)). The ICPC was intended to extend the jurisdictional reach of a state into the borders

of another state for the purpose of investigating a potential placement and supervising that placement once it was made. *Id.* at 296.

The ICPC was adopted by Washington in 1971. Laws of 1971, ch. 168, sec. 1. As adopted by Washington, the ICPC expressly defines its purpose and policy as facilitating cooperation between the states in the placement and monitoring of dependent children. RCW 26.34.010, Art. I.

The ICPC states that its intent is to ensure that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangements for the care of children will be promoted.

RCW 26.34.010, Art. I.

Article X of the ICPC provides that the compact be “liberally construed to effectuate the purposes thereof.” RCW 26.34.010. Thus, the legislature intended that the ICPC be used to facilitate placements which serve the best interests of the child in question, without regard to interstate or intrastate jurisdictional complications. *See Hartfield, supra* at 297.

**C. The Court-Ordered Placement Of A Dependent Child In Another State Requires The Consent Of That State Through The ICPC**

Before any child who is the subject of a dependency proceeding in Washington may be placed in another state, the ICPC requires that the state receiving the child consent to the placement. Specifically, the ICPC requires:

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein...(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

RCW 26.34.010, Art. III(a) and (d) [emphasis added].

As used in the ICPC, a “sending agency” includes a party state and employees or officers thereof, and the courts of any party state. RCW 26.34.010, Art. II(b). Thus, a juvenile court in Washington is a “sending agency” for purposes of the ICPC. Further, the juvenile court has exclusive jurisdiction over matters under the ICPC. RCW 13.04.030(1)(a). DSHS is also required to comply with all compact requirements as set forth in that statute when it considers placing a child in another state. WAC 388-25-0440. “Receiving state” means the state to which the child is sent or caused to be sent, whether by public authorities or private agencies or persons, and

whether for placement with public authorities or private agencies or persons.  
RCW 26.34.010, Art. II(c).

Guidance as to the scope and reach of the ICPC can be obtained from the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC). The AAICPC is empowered by the ICPC to promulgate rules and regulations to carry out more effectively the terms and provision of the compact. RCW 26.34.010, Art. VII.

ICPC Regulation No. 3 was adopted by the AAICPC effective July 2, 2001 and specifically addresses the issue of the court-ordered placement of a child with a parent in another state. ICPC Reg. 3 (App. A at 2-3). The regulation provides that “placement” as used in Article II(d) of the ICPC includes “the arrangement for the care of a child in the home of his parent . . . in a receiving state when the sending agency is any entity other than a parent.” ICPC Reg 3(1). (App. A at 3) [emphasis added]. The regulation further clarifies that the term “foster care” as used in Article III(a) includes circumstances where “care is provided by the child’s parent(s) by reason of a court-ordered placement.” ICPC Reg 3(5). (App. A at 3) [emphasis added].

Article VIII of the ICPC provides that the compact does not apply to the sending of a child into a receiving state by a parent and leaving the child with a relative of guardian in that state. RCW 26.34.010, Art. VIII(a). Regulation 3 clarifies that the parent exempt under Article VIII:

. . . is a person whose full legal right to plan for the child:  
(1) has been established by law at a time prior to the

initiation of the placement arrangement, and (2) has not been voluntarily terminated, or diminished or severed by the action or order of any court.

Reg. 3(6)(a) (App. A at 3).

Regulation 3 also clarifies that the compact does not apply to cases where a court transfers custody to a non-custodial parent where “the court does not have evidence before it that such person is unfit, does not seek such evidence, and does not retain jurisdiction over the child after the court transfers the child.” Reg. 3(6)(b) (App. A at 3) [emphasis added].

Reading the ICPC together with the regulations adopted by the AAICPC, the compact requires that, where a child is subject to the jurisdiction of a juvenile court in this state, this state must obtain approval of a receiving state prior to sending the child for placement in that state. As a general rule, it is not relevant that the child is being placed with a parent in the receiving state. The one exception to that rule is the circumstance where the court is placing the child with a fit parent and terminates jurisdiction over the child once the placement occurs. If the court making the placement intends to retain jurisdiction over the child, as it did here, the provisions of the ICPC are implicated and the consent of the receiving state is required before the placement may be made.

Here, both Washington and Oklahoma are signatories to the ICPC. Chapter 26.34 RCW; 10 O.S.A. sec. 571-576. The juvenile court placed D.F.-M. with his father in Oklahoma in violation of the ICPC. There is no dispute that DSHS had filed a petition with the juvenile court alleging that D.F.-M. was a dependent child. There is no dispute that with the filing of

the petition, the juvenile court obtained exclusive jurisdiction over the child and retained sole authority to determine where the child would be placed. *See* RCW 13.04.030(1)(d). There is no dispute that DSHS—as it was legally obligated to do—submitted a request under the ICPC to Oklahoma asking that state to consent to the child’s placement with his father in Oklahoma. Even though Oklahoma declined consent and withheld approval of the placement, the juvenile court ordered the child to be sent to Oklahoma anyway. In doing so it violated the ICPC.

The mother appears to argue that a relevant factor is that the father was not a custodial parent of D.F.-M. App. Br. at 6-7, 13. She argues, for example, that this Court should conclude that whenever an out-of-state placement of a dependent child with a non-custodial parent is contemplated, the ICPC applies. App. Br. at 7. The statute should not be so narrowly construed.

In determining whether the ICPC applies to a given circumstance, the relevant inquiry is whether it is the parent or some other entity, such as the juvenile court, that has the authority to make the placement. Here, the sending agency was the juvenile court, not a parent. *See* Reg. 3(6)(a). Because the child was under the exclusive jurisdiction of the juvenile court, the legal rights of both parents to plan for the child’s care were significantly diminished. *Id.* After making the placement, the juvenile court continued to exercise jurisdiction over the child and, in fact, continues to exercise legal control over the child’s custody. *See* Reg. 3(6)(b). Because the child was sent to live with the father by virtue of a

juvenile court order, the juvenile court made a “placement in foster care” as that term is used in the ICPC. *See* RCW 26.34.010, Art. III(a); Reg. 3(1) and 3(5) (App. A at 3).

D.F.-M. was the subject of a dependency action and was under the exclusive jurisdiction of the juvenile court. The child was placed with the father in another state only under the authority of a juvenile court order, and not at the direction of either parent. Under these facts, the Interstate Compact on the Placement of Children applied to this case.

Because Oklahoma did not consent to the child’s placement in that state, the juvenile court violated the ICPC when it ordered that D.F.-M. be placed with the father. Moreover, because Oklahoma did not consent to the placement, neither the juvenile court nor DSHS has the ability to assess the safety of the father’s home, to supervise the transition of the child, or provide him with necessary services, including contact with his siblings. The juvenile court’s placement order should be reversed.

**D. The Court Should Adopt The Majority Interpretation That The ICPC Applies To Placements By Courts With A Biological Parent In Another State**

As noted by the mother, there is a split of authority regarding the issue of whether the ICPC applies to non-custodial parents. App. Br. at 11-12. The majority of states that have addressed this situation have interpreted the ICPC to apply to placement with non-custodial parents, so

long as the child remains subject to the jurisdiction of the juvenile court,<sup>3</sup> while a minority of jurisdictions have disagreed and held it inapplicable to placement with biological parents.<sup>4</sup>

This Court should adopt the majority interpretation of the ICPC. The ICPC directs that its provisions are to be “liberally construed to effectuate [its] purposes.” RCW 26.34.010, Art. X. Further, the ICPC states that its purpose is to provide each child the maximum opportunity to be placed in a suitable environment, to allow the sending state to obtain complete information from the receiving state, and for the receiving state to have full opportunity to investigate and be able to protect the child. RCW 26.34.010, Art. I.

The interpretation of the ICPC by the majority of states is consistent with the ICPC’s purpose of protecting children from harm. As noted by a Florida court:

Once a court has legal custody of a child, it would be negligent to relinquish that child to an out-of-state parent without some indication that the parent is able to care for

---

<sup>3</sup> See e.g. *Arizona Dep’t of Econ. V. Leonardo*, 200 Ariz. 74, 22 P.3d 513 (2001); *D.S.S. v. Clay County Dept. of Human Resources*, 755 So.2d 584 (AL. 1999); *Green v. Div. of Family Services*, 864 A.2d 921 (DE. 2004); *In re Petition of T.M.J., J.A.*, 878 A.2d 1200 (D.C. 2005); *C.K. v. Dept. of Children and Families*, 949 So.2d 336 (FL. 2007); *In re Adoption of Warren*, 44 Mass. App. Ct. 620, 693 N.E.2d 620 (1998); *K.D. G.L. B.P. v. Hinds County Dept. of Human Services*, 771 So.2d 907 (MS. 2000); *State ex rel. Juvenile Dept. of Clackamas County v. Smith*, 107 Or. App. 129, 811 P.2d 145 (1991); *In re J.H.* 156 Vt. 66, 587 A.2d 1009 (1991).

<sup>4</sup> See e.g. *McComb v. Wambaugh*, 934 F.2d 474, (3<sup>rd</sup> Cir. 1991); *Ark. Dept. of Human Serv. v. Huff*, 347 Ark. 553, 65 S.W.3d 880 (2002); *Tara S. v. The Superior Court of San Diego County*, 13 Cal. App. 4<sup>th</sup> 1834, 17 Cal. Rptr. 2d 315 (1993).

the child appropriately. The ICPC provides an effective mechanism for gleaning that evidence and for maintaining a watchful eye over the placement.

*Dept. of Children and Families v. Benway*, 745 So.2d 437, 439 (FL. 1999). Interpreting the ICPC to apply to situations where there is an out-of-state parent who does not have legal custody, has had little part in a child's life, and about whom the court has little information furthers the ICPC's purposes.

In contrast, the placement of the child without ICPC approval in this case does not allow the child's safety or well-being to be monitored. By placing the child in Oklahoma without that state's permission, the juvenile court deprived DSHS of the means to supervise the child's placement. Without Oklahoma's assistance, DSHS has little ability or authority to provide services in Oklahoma, to monitor the safety and well being of the child, to gather information about the child, or provide for continued contact with his mother or his siblings.<sup>5</sup> Although DSHS does not have any indication that the child is currently in danger, DSHS cannot independently determine that the child is safe. Nor, without Oklahoma's approval, does the court have any authority to enforce its court orders in Oklahoma in timely fashion.

---

<sup>5</sup> DSHS is responsible for reporting to the juvenile court on the status of the child, compliance by a parent with DSHS's case plan and court ordered services. RCW 13.34.138(3). *See also* RCW 13.34.145. DSHS is also required to report to the juvenile court on the status of the child's relationships with any siblings. RCW 13.34.138(5).

Children in Washington have a right to basic nurture, health, and safety. RCW 13.34.020. The majority interpretation of the ICPC advances these rights by allowing DSHS and the court to retain the ability to monitor the well-being of children who are subject to dependency proceedings and who are placed out-of-state. The minority view of the ICPC is inconsistent with the purposes of the compact and inconsistent with the purposes of Washington's child protection laws.

///

///

///

#### IV. CONCLUSION

The juvenile court violated the Interstate Compact on the Placement of Children when it placed D.F.-M. with his father in Oklahoma without the approval of that state. The juvenile court's placement order should be reversed.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of March, 2010.

ROBERT M. MCKENNA  
Attorney General

  
SCOTT MAJORS, WSBA #20203  
Assistant Attorney General

**APPENDIX A**  
**ICPC REGULATIONS**



**ICPC Regulations**

**Regulation No. 0.01.**

**Forms**

1. To promote efficiency in processing placements pursuant to the Interstate Compact on the Placement of Children (ICPC) and to facilitate communication among sending agencies, states and other concerned persons, the forms promulgated by the compact administrators, acting jointly, shall be used by all sending agencies, sending and receiving states, and others participating in the arranging, making, processing and supervision of placements.

2. ICPC forms shall be uniform as to format and substance, and each state shall make available a reference to where its forms may be obtained by the public.

3. The mandatory forms currently in effect are described below. These forms shall be reproduced in sufficient supply by each of the states to meet its needs and the needs of persons and agencies required to use them. Forms referenced in the preceding sentence, above, currently in effect are the following:

ICPC-100A "Interstate Compact Placement Request;"

ICPC-100B "Interstate Compact Report on Child's Placement Status;"

ICPC-100C "Quarterly Statistical Report: Placements Into An ICPC State;"

ICPC-100D "Quarterly Statistical Report: Placements Out Of An ICPC State;" and

ICPC-101 "Sending State's Priority Home Study Request."

4. Form ICPC-102 "Receiving State's Priority Home Study Request" is an optional form that is available for use.

5. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

6. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved May 2, 2001, and is effective as of July 2, 2001.

**Regulation No. 1**

**Conversion of Intrastate Placement into Interstate Placement:**

**Relocation of Family Units**

1. Regulation No. 1 as first effective May 1, 1973, is repealed and is replaced by the following:

2. A placement initially intrastate in character becomes an interstate placement subject to the Interstate Compact on the Placement of Children (ICPC) if the child's principal place of abode is moved to another state.

3. If the child is to be sent or brought to the receiving state more than forty-five (45) days in the future, the normal procedures of ICPC for an interstate placement shall be initiated. However, the ICPC-100A and the information accompanying it shall make it specific and clear that the relocation of a family unit is involved and that the family home is not yet in the receiving state. As much information as reasonably possible shall be given to the receiving state concerning the location and character of the intended family home in the receiving state.

4. (a) In any instance where the decision to relocate into another state is not made until forty-five (45) days or less before the date on which it is intended to send or bring the child to the receiving state, an ICPC-100A and its supporting documentation shall be prepared immediately upon the making of the decision, processed promptly by the sending agency's state compact administrator and transmitted to the receiving state compact administrator. The sending agency's state compact administrator shall request that the receiving state provide prompt handling of the case with due regard for the desired time for the child to be sent or brought to the receiving state.

a. The documentation provided with a request for prompt handling

shall include:

(1) A form ICPC-100A fully completed.

(2) A copy of the court order pursuant to which the sending agency has authority to place the child or, if authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child.

(3) A case history for the child.

(4) In any instance where the sending state has required licensure, certification or approval, a copy of the most recent license, certificate or approval of the qualification of the custodian(s) and/or their home showing the status of the custodian(s), as qualified custodian(s).

(5) A copy of the most recent home study of the custodian(s) and any updates thereof.

(6) A copy of the child's permanency plan and any supplements to that plan.

(7) An explanation of the current status of the child's Title IV-E eligibility under the Federal Social Security Act.

(c) Requests for prompt handling shall be as provided in paragraph 4(a) hereof. Some or all documents may be communicated by express mail or any other recognized method for expedited communication. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation, provided that it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies if it considers them necessary for a legally sufficient record under its laws.

(d) In an instance where a custodian(s) holds a current license, certificate or approval from the sending state evidencing qualification as a foster parent or other custodian, the receiving state shall give effect to such license, certificate or approval as sufficient to support a determination of qualification pursuant to Article III(d) of ICPC, unless the receiving state compact administrator has substantial evidence to the contrary. This provision applies to a case which meets the description set forth in paragraph 4(b) of this regulation.

(e) The receiving state may decline to provide a favorable determination pursuant to Article III(d) of ICPC if its compact administrator finds that the child's needs cannot be met under the circumstances of the proposed relocation, or until it has the documentation identified in subparagraph (b) hereof.

(f) If necessary or helpful to meet time requirements, the receiving state may communicate its determination pursuant to Article III (d) to the sending agency and the sending agency's state compact administrator by "FAX" or other means of facsimile transmission. However, this may not be done before the receiving state compact administrator has actually recorded the determination on the ICPC-100A. The written notice (the completed ICPC-100A) shall be mailed or otherwise sent promptly to meet Article III(d) written notice requirements.

5. If the referral is submitted by a custodian(s), a receiving state shall recognize and give effect to evidence that the custodian(s) have satisfactorily completed required training for foster parents or other parent training. Such recognition and effect shall be given if:

(a) the training program is shown to be substantially equivalent to training offered for the same purpose in the receiving state; and

(b) the evidence submitted is in the form of an official certificate or other document identifying the training.

6. Nothing in this regulation shall be construed to alter the obligation of a receiving state to supervise and report on the placement; nor to alter the requirement that the custodian(s) comply with the licensing and other applicable laws of the receiving state after arrival therein.

7. A favorable determination made by a receiving state pursuant to Article III(d) of the ICPC and this regulation means that the receiving state is making such determination on the basis of the best evidence available to it in accordance with the requirements of paragraph 4(b) of this regulation and does not relieve any custodian or other entity of the obligation to comply with the laws of the receiving state as promptly after arrival in the receiving state of the child as possible. If it is subsequently determined that the placement in the receiving state appears to be contrary to the interest of the child, the sending agency shall arrange to return the child or make an alternative placement as provided in Article V(a) of the ICPC.

8. Within thirty (30) days of being notified by the sending state or by the custodian(s) that the custodian(s) and the child have arrived in the receiving state, the appropriate personnel of the receiving state shall make an initial contact with the custodian(s) to ascertain conditions and progress toward compliance with applicable laws and requirements of the receiving state.

9. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

10. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999.

#### **Regulation No. 2. Repealed.**

This regulation, adopted May 25, 1977, relating to certain programs in which children could be placed in family homes to permit their attendance at local public schools was repealed by action taken at the annual meeting of the Association of Administrators of the Interstate Compact on the Placement of Children, April 1999.

#### **Regulation No. 3**

##### **Placements with Parents, Relatives,**

##### **Non-agency Guardians, and Non-family Settings**

The following regulation, adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after July 2, 2001.

1. "Placement" as defined in Article II (d) includes the arrangement for the care of a child in the home of his parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII (a) of the Compact.

2. "Conditions for Placement" as established by Article III apply to any placement as defined in Article II (d) and Regulations adopted by action of the Association of Administrators of the Interstate Compact on the Placement of Children.

3. The terms "guardian" and "non-agency guardian" have the same meanings as set forth in Regulation No. 10 of the Regulations for the Interstate Compact on the Placement of Children (ICPC).

4. The term "family free or boarding home" as used in Article II (d) of ICPC means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient.

5. The term "foster care" as used in Article III of ICPC, except as modified in this paragraph, means care of a child on a 24-hour a day basis away from the home of the child's parent(s). Such care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity. In addition, if 24-hour a day care is provided by the child's parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship), the care is foster care.

6. (a) Pursuant to Article VIII (a), this Compact does not apply to the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or non-agency guardian in the receiving state, provided that such person who brings, sends, or causes a child to be sent or brought to a receiving state is a person whose full legal right to plan for the child: (1) has been established by law at a time prior to initiation of the placement arrangement, and (2) has not been voluntarily terminated, or diminished or severed by the action or order of any court.

(b) The Compact does not apply whenever a court transfers the child to a non-custodial parent with respect to whom the court does not have evidence before it that such parent is unfit, does not seek such evidence, and does not retain jurisdiction over the child after the court transfers the child.

7. Placement of a child requires compliance with the Compact if such placement is with either of the following:

(a) any relative, person, or entity not identified in Article VIII of the Compact; or

(b) any entity not included in the definition of placement as specified in Article II (d) of the Compact.

8. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

9. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

10. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved on May 2, 2001 and is effective as of July 2, 2001.

#### **Regulation No. 4**

#### **Residential Placement**

The following regulation was adopted by the Association of Administrators of the Interstate Compact on the Placement of Children on April 20, 1983, was readopted in 1999, was amended in 2001, and is declared to be effective, as amended, as of July 2, 2001.

1. In determining whether the sending or bringing of a child to another state is exempt from the provisions of the Interstate Compact on the Placement of Children by reason of the exemption for various classes of institutions in Article II (d), the following concepts and terms shall have the following meanings:

(a) "Primarily educational institution" means an institution which operates one or more programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs; and which does not do one or more of the following:

(1) accept responsibility for children during the entire year;

(2) provide or hold itself out as providing child care constituting nurture sufficient to substitute for parental supervision and control or foster care;

(3) provide any other services to children, except for those customarily regarded as extracurricular or cocurricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a residential basis in the aforementioned school program or programs.

(b) "Hospital or other medical facility" means an institution for the acutely ill which discharges its patients when they are no longer acutely ill, which does not provide or hold itself out as providing child care in substitution for parental care or foster care, and in which a child is placed for the primary purpose of treating an acute medical problem.

(c) "Institution for the mentally ill or mentally defective" minors means a facility which is responsible for treatment of acute conditions, both psychiatric and medical, as well as such custodial care as is necessary for the treatment of such acute conditions of the minors who are either voluntarily committed or involuntarily committed by a court of competent jurisdiction to reside in it. Developmentally disabled has the same meaning as the phrase "mentally defective."

(d) Treatment for a chronic mental or behavioral condition, as described in this regulation, that is 24-hour care away from the child's parental home is foster care as such term is used in Article III of ICPC.

2. (a) Admission for treatment of an acute condition includes the treatment and care of minors who are mentally ill or developmentally disabled and who require stabilization of such condition for short-term treatment. Such short term treatment is exempt from the Interstate Compact on the Placement of Children.

(b) Placement for treatment of a chronic condition includes the treatment and care of minors who may be mentally ill, emotionally ill, or developmentally disabled and require treatment beyond what was required for stabilization of the underlying acute condition. Treatment modalities for chronic conditions may include psychotherapy and psychopharmacology.

(c) Any placement of a minor for treatment of that minor's chronic mental or behavioral condition into a facility having treatment programs for acute and chronic conditions must be made pursuant to the Interstate Compact on the Placement of Children. The Interstate Compact on the Placement of Children becomes applicable once the minor is placed for treatment of a chronic condition regardless of whether that child was originally placed in the same facility for treatment of an acute condition.

(d) A minor may be accepted into a residential treatment center without first having been in that facility for the treatment of an acute condition. An interstate placement of a minor into such a facility must be made pursuant to the Interstate Compact on the Placement of Children.

3. An institution for the mentally ill or developmentally disabled may accept a child for treatment and care without complying with ICPC, if the treatment and care and other services are entirely out-patient in character.

4. The type of funding source or sources used to defray the costs of treatment or other services does not determine whether the Interstate Compact on the Placement of Children applies. Such determination is made on a case-by-case basis.

5. The type of license, if any, held by an institution is evidence of its character, but does not determine the need for compliance with ICPC. Whether an institution is either generally exempt from the need to comply with the Interstate Compact on the Placement of Children or exempt in a particular instance is to be determined by the services it actually provides or offers to provide. In making any such determinations, the criteria set forth in this regulation shall be applied.

6. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

7. This regulation was amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; such amendment was approved on May 2, 2001 and is effective as of July 2, 2001.

#### **Regulation No. 5**

##### **Central State Compact Office**

Regulation No. 5 ("Central State Compact Office"), as first effective April 1982, is amended to read as follows:

1. It shall be the responsibility of each state party to the Interstate Compact on the Placement of Children to establish a procedure by which all Compact referrals from and to the state shall be made through a central state compact office. The Compact Office shall also be a resource for inquiries into requirements for placements into the state for children who come under the purview of this Compact.

2. The Association of Administrators of the Interstate Compact on the Placement of Children deems certain appointments of officers who are general coordinators of activities under the Compact in the party states to have been made by the executive heads of states in each instance wherein such an appointment is made by a state official who has authority delegated by the executive head of the state to make such an appointment. Delegated authority to make the appointments described above in this paragraph will be sufficient if it is either: specifically described in the applicable state's documents that establish or control the appointment or employment of the state's officers or employees; a responsibility of the official who has the delegated authority that is customary and accepted in the applicable state; or consistent with the personnel policies or practices of the applicable state. Any general coordinator of activities under the Compact who is or was appointed in compliance with this paragraph is deemed to be appointed by the executive head of the applicable jurisdiction regardless of whether the appointment preceded or followed the adoption of this paragraph.

3. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

4. This regulation was first effective on April 20, 1982; was amended as of April 1999; and is amended by the Compact Administrators, acting jointly and pursuant to Article VII of the Interstate Compact on the Placement of Children, at their annual meeting of April 2002, with such amendments effective after June 27, 2002.

#### **Regulation No. 6**

##### **Permission to Place Child: Time Limitations, Reapplication**

The following regulation, originally adopted in 1991 by the Association of Administrators of the Interstate Compact on the Placement of Children, is amended in 2001 and declared to be in effect, as amended, on and after July 2, 2001.

1. Permission to place a child given pursuant to Article III (d) of the Interstate Compact on the Placement of Children shall be valid and sufficient to authorize the making of the placement identified in the written document ICPC-100A, by which the permission is given for a period of six (6) months commencing on the date when the receiving state compact administrator or his duly authorized representative signs the aforesaid ICPC-100A.

2. If the placement authorized to be made as described in Paragraph 1. of this Regulation is not made within the six (6) months allowed therein, the sending agency may reapply. Upon such reapplication, the receiving state may require the updating of documents submitted on the previous application, but shall not require a new home study unless the laws of the receiving state provide that the previously submitted home study is too old to be currently valid.

3. If a foster care license, institutional license or other license, permit or certificate held by the proposed placement recipient is still valid and in force, or if the proposed placement recipient continues to hold an appropriate license, permit or certificate, the receiving state shall not require that a new license, permit or certificate be obtained in order to qualify the proposed placement recipient to receive the child in placement.

4. Upon a reapplication by the sending agency, the receiving state shall determine whether the needs or condition of the child have changed since it initially authorized the placement to be made. The receiving state may deny the placement if it finds that the proposed placement is contrary to the interests of the child.

5. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

6. This regulation was readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999; it is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001, was approved May 2, 2001, and is effective in such amended form as of July 2, 2001.

#### **Regulation No. 7**

#### **Priority Placement**

The following regulation adopted by the Association of Administrators of the Interstate Compact on the Placement of Children is declared to be in effect on and after July 2, 2001.

1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.

2. This regulation shall not apply to any case in the sending state wherein:

- (a) the request for placement of the child is for licensed or approved foster family care or adoption; or
- (b) the child is already in the receiving state in violation of ICPC.

3. Whenever a court, upon request, or on its own motion, or where court approval is required, determines that a proposed priority placement of a child from one state into another state is necessary, the court shall make and sign an order embodying that finding. The court shall send its order to the Sending Agency within two (2) business days. The order shall include the name, address, telephone number, and if available, the FAX number, of the judge and the court. The court shall have the sending agency transmit, within three (3) business days, the signed court order, a completed Form 100A ("Request for Placement") and supporting documentation pursuant to ICPC Article III, to the sending state Compact Administrator. Within a time not to exceed two (2) business days after receipt of the ICPC priority placement request, the sending state Compact Administrator shall transmit the priority request and its accompanying documentation to the receiving state Compact Administrator together with a notice that the request for placement is entitled to priority processing.

4. The court order, ICPC-100A, and supporting documentation referred to in Paragraph Three (3) hereof shall be transmitted to the receiving state Compact Administrator by overnight mail together with a cover notice calling attention to the priority status of the request for placement. The receiving state Compact Administrator shall make his or her determination pursuant to Article III (d) of ICPC as soon as practicable but no later than twenty (20) business days from the date the overnight mailing was received and forthwith shall send the completed 100-A by FAX to the sending state Compact Administrator.

5. (a) If the receiving state Compact Administrator fails to complete action as the receiving state prescribed in Paragraph Four (4) hereof within the time period allowed, the receiving state shall be deemed to be out of compliance with ICPC. If there appears to be a lack of compliance, the court, which made the priority order, may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the making of appropriate orders, for the purpose of obtaining compliance with this Regulation and ICPC.

(b) The foregoing shall not apply if:

(1) within two (2) business days of receipt of the ICPC priority placement request, the sending state Compact Administrator determines that the ICPC request documentation is substantially insufficient, specifies that additional information is needed, and requests the additional documentation from the sending agency. The request shall be made by FAX, or by telephone if FAX is not available, or

(2) within two (2) business days of receipt of the ICPC priority placement request, the receiving state Compact Administrator notifies the sending state Compact Administrator that further information is necessary. Such notice shall specifically detail the information needed. For a case in which this subparagraph applies, the twenty (20) business day period for the receiving state Compact Administrator to complete action shall be calculated from the date of the receipt by the receiving state Compact Administrator of the information requested.

(c) Where the sending state court is not itself the sending agency, it is the responsibility of the sending agency to keep the court, which issued the priority order, informed of the status of the priority request.

6. A court order finding entitlement to a priority placement shall not be valid unless it contains an express finding that one or more of the following circumstances applies to the particular case and sets forth the facts on which the court bases its finding:

(a) the proposed placement recipient is a relative belonging to a class of persons who, under Article VIII (a) of ICPC could receive a child from another person belonging to such a class, without complying with ICPC and; (1) the child is under two (2) years of age; or (2) the child is in an emergency shelter; or (3) the court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

(b) the receiving state Compact Administrator has a properly completed ICPC-100A and supporting documentation for over thirty (30) business days, but the sending agency has not received a notice pursuant to Article III (d) of ICPC determining whether the child may or may not be placed.

7. Time periods in this regulation may be modified with a written agreement between the court which made the priority order, the sending agency, the receiving state Compact Administrator, and the sending state Compact Administrator. Any such modification shall apply only to the single case to which it is addressed.

8. To fulfill its obligations under ICPC, a state and its local agencies must process interstate cases no less quickly than intrastate cases and give no less attention to interstate hardship cases than to intrastate hardship cases. If in doing so, a receiving state Compact Administrator finds that extraordinary circumstances make it impossible for it and its local agencies to comply with the time requirements set forth in this regulation, it may be excused from strict compliance therewith. However, the receiving state Compact Administrator shall, within two (2) business days of ascertaining inability to comply, notify the sending state Compact Administrator via FAX of the inability to comply and shall set forth the date on or before which it will complete action. The notice shall contain a full identification and explanation of the extraordinary circumstances which are delaying compliance.

9. Unless otherwise required or allowed by this regulation, all transmittals of documents or other written materials shall be by overnight express mail carrier service.

10. This regulation as first effective October 1, 1996, and readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999, is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved on May 2, 2001 and is effective as of July 2, 2001.

#### **Regulation No. 8**

##### **Change of Placement Purpose**

1. An ICPC-100B should be prepared and sent in accordance with its accompanying instructions whenever there is a change of purpose in an existing placement, e.g., from foster care to preadoption even though the placement recipient remains the same. However, when a receiving state or a sending state requests a new ICPC-100A in such a case, it should be provided by the sending agency and transmitted in accordance with usual procedures for processing of ICPC-100As.

2. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

3. This regulation is effective on and after April 30, 2000, pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 30-May 3, 2000.

#### **Regulation No. 9**

##### **Definition of a Visit**

Regulation No. 9 ("Definition of a Visit"), as first adopted in 1999, is amended to read as follows:

1. A visit is not a placement within the meaning of the Interstate Compact on the Placement of Children (ICPC). Visits and placements are distinguished on the basis of purpose, duration, and the intention of the person or agency with responsibility for planning for the child as to the child's place of abode.

2. The purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a stay in a camp or with a friend or relative who has not assumed legal responsibility for providing child care services.

3. It is understood that a visit for twenty-four (24) hours or longer will necessarily involve the provision of some services in the nature of child care by the person or persons with whom the child is staying. The provision of these services will not, of itself, alter the character of the stay as a visit.

4. If the child's stay is intended to be for no longer than thirty (30) days and if the purpose is as described in Paragraph 2, it will be presumed that the circumstances constitute a visit rather than a placement.

5. A stay or proposed stay of longer than thirty (30) days is a placement or proposed placement, except that a stay of longer duration may be considered a visit if it begins and ends within the period of a child's vacation from school as ascertained from the academic calendar of the school. A visit may not be extended or renewed in a manner which causes or will cause it to exceed thirty (30) days or the school vacation period, as the case may be. If a stay does not from the outset have an express terminal date, or if its duration is not clear from the circumstances, it shall be considered a placement or proposed placement and not a visit.

6. A request for a home study or supervision made by the person or agency which sends or proposes to send a child on a visit and that is pending at the time that the visit is proposed will establish a rebuttable presumption that the intent of the stay or proposed stay is not a visit.

7. A visit as defined in this regulation is not subject to the Interstate Compact on the Placement of Children.
8. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.
9. This regulation was first adopted as a resolution effective April 26, 1983; was promulgated as a regulation as of April 1999; and is amended by the Compact Administrators, acting jointly and pursuant to Article VII of the Interstate Compact on the Placement of Children, at their annual meeting of April 2002, with such amendments effective after June 27, 2002.

## **Regulation No. 10**

### **Guardians**

Regulation No. 10 ("Guardians"), as first adopted in 1999, is amended to read as follows:

#### **1. Guardian Defined.**

As used in the Interstate Compact on the Placement of Children (ICPC) and in this Regulation:

(a) "Guardian" means a public or private agency, organization or institution which holds a valid and effective permanent appointment from a court of competent jurisdiction to have custody and control of a child, to plan for the child, and to do all other things for or on behalf of a child which a parent would have authority and responsibility for doing by virtue of an unrestricted parent-child relationship. An appointment is permanent for the purposes of this paragraph if the appointment would allow the guardianship to endure until the child's age of majority without any court review, subsequent to the appointment, of the care that the guardian provides or the status of other permanency planning which the guardian has a professional obligation to carry out. Guardian also means an individual who is a non-agency guardian as defined in subparagraph (b) hereof.

(b) "Nonagency guardian" means an individual holding a currently valid appointment from a court of competent jurisdiction to have all of the authority and responsibility of a guardian as defined in subparagraph (a) hereof.

#### **2. Prospective Adoptive Parents Not Guardians.**

An individual with whom a child is placed as a preliminary to a possible adoption cannot be considered a non-agency guardian of the child, for the purpose of determining applicability of ICPC to the placement, unless the individual would qualify as a lawful recipient of a placement of the child without having to comply with ICPC as provided in Article VIII (a) thereof.

#### **3. Effect of Guardianship on ICPC Placements.**

(a) An interstate placement of a child with a nonagency guardian, whose appointment to the guardianship existed prior to consideration of the making of the placement, is not subject to ICPC if the sending agency is the child's parent, stepparent, grandparent, adult brother or sister, or adult uncle or aunt.

(b) An appropriate court of the sending agency's state must continue its jurisdiction over a non-exempt placement until applicability of ICPC to the placement is terminated in accordance with Article V (a) of ICPC.

#### **4. Permanency Status of Guardianship.**

(a) A state agency may pursue a guardianship to achieve a permanent placement for a child in the child welfare system, as required by federal or state law. In the case of a child who is already placed in a receiving state in compliance with ICPC, appointment of the placement recipient as guardian by the sending state court is grounds to terminate the applicability of the ICPC when the sending and receiving state compact administrators concur on the termination pursuant to Article V (a). In such an instance, the court which appointed the guardian may continue its jurisdiction if it is maintainable under another applicable law.

(b) If, subsequent to the making of an interstate placement pursuant to ICPC, a court of the receiving state appoints a non-agency guardian for the child, such appointment shall be construed as a request that the sending agency and the receiving state concur in the discontinuance of the application of ICPC to the placement. Upon concurrence of the sending and receiving states, the sending agency and an appropriate court of the sending state shall close the ICPC aspects of the case and the jurisdiction of the sending agency pursuant to Article V (a) of ICPC shall be dismissed.

#### **5. Guardian Appointed by Parent.**

If the statutes of a jurisdiction so provide, a parent who is chronically ill or near death may appoint a guardian for his or her children, which guardianship shall take effect on the death or mental incapacitation of the parent. A nonagency guardian so appointed shall be deemed a nonagency guardian as that term is used in Article VIII (a) of ICPC, provided that such nonagency guardian has all of the powers and responsibilities that a parent would have by virtue of an unrestricted parent-child relationship. A placement with a nonagency guardian as described in this paragraph shall be effective for the purposes of ICPC without court appointment or confirmation unless the statute pursuant to which it is made otherwise provides and if there is compliance with procedures required by the statute. However, the parent must be physically present in the jurisdiction having the statute at the time that he or she makes the appointment or expressly submits to the jurisdiction of the appointing court.

#### **6. Other Definitions of Guardianship Unaffected.**

The definitions of "guardian" and "nonagency guardian" contained in this regulation shall not be construed to affect the meaning or applicability of any other definitions of "guardian" or "nonagency guardian" when employed for purposes or to circumstances not having a bearing on placements proposed to be made or made pursuant to ICPC.

7. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

8. This regulation was first promulgated in April 1999; It is amended by the Compact Administrators, acting jointly and pursuant to Article VII of the Interstate Compact on the Placement of Children, at their annual meeting of April 2002, with such amendments effective after June 27, 2002.



[FAQ](#) | [RESOURCES](#) | [CONFERENCES](#) | [NEW ICPC](#) | [CONTACT US](#) | [APHSA](#)  
©2007 APHSA. All rights reserved